

1 THE STATE OF NEW YORK

2 NEW YORK STATE CENTRAL PINE BARRENS

3 JOINT PLANNING & POLICY COMMISSION

4 -----X

5 Public Hearing in the Matter of:

6 JAMES EAGAN, HENRY DITTMER c/o ARMAND EAGAN,  
7 CORE PRESERVATION AREA HARDSHIP WAIVER APPLICATION

8 Location: East side of Yaphank Middle Island Road,  
9 Yaphank, Town of Brookhaven

10 Suffolk County Tax Map Number 200-529-5-36

11 Pursuant to New York State  
12 Environmental Conservation Law  
13 Article 57-0121(10) and the  
14 Central Pine Barrens Comprehensive Land Use Plan  
15 -----X

16  
17 October 17, 2018  
18 3:00 P.M.

19  
20 BROOKHAVEN TOWN HALL  
21 ONE INDEPENDENCE HILL  
22 FARMINGVILLE, NY

23  
24 B E F O R E:

25  
26 Carrie Meek Gallagher, Chairwoman

1   FOR THE COMMISSION:

2   CARRIE MEEK GALLAGHER, Chairwoman/Representative  
3       for New York State's Governor's Office

4   DORIAN DALE, Designated Representative for  
5       Member/Suffolk County Executive Steve Bellone

6   JANET P. LONGO, Designated Representative for  
7       Member/Suffolk County Executive Steve Bellone

8   EMILY PINES, Designated Representative for  
9       Member/Brookhaven Supervisor Edward P. Romaine

10   KYLE P. COLLINS, Designated Representative for  
11       Member/Southampton Supervisor Jay H. Schneiderman

12   MARTY SHEA, Designated Representative for  
13       Member/Southampton Supervisor Jay H. Schneiderman

14   LAURA JENS-SMITH, Member/Riverhead Supervisor

15   DANIEL P. McCORMICK - Member/Designated  
16       Representative for Riverhead  
17       Supervisor Laura Jens-Smith

18   JOHN W. PAVACIC, Executive Director,  
19       Central Pine Barrens Commission

20   FOR THE APPLICANT:

21   ARMAND EAGAN

22   PETER D. BARON, Esq.

23   Also Present:

24       John Milazzo, ESQ., Commission Staff,  
25       Special Counsel

      Julie Hargrave, Principal Environmental Planner

      Jerry Tverdy, Senior Environmental Analyst

      Carol Sholl-Ostrowski, Administrative Assistant

      Stephanie J. Valder, Stenographer

      The Public

1 P R O C E E D I N G S

2 CHAIRWOMAN MEEK GALLAGHER: All right.  
3 It's 3:00. We're going to get started with the  
4 first of two public hearings. Yes, you're  
5 gonna explain that though; right John?

6 MR. PAVACIC: Yeah, I will. One of us  
7 will do it.

8 CHAIRWOMAN MEEK GALLAGHER: Okay.  
9 Do you have appearances? Do we need  
10 appearances or what?

11 THE STENOGRAPHER: I have everybody  
12 around the table, just whoever's sitting in --

13 CHAIRWOMAN MEEK GALLAGHER: Okay, so  
14 you have them.

15 Okay. I'll read out the notice of  
16 public hearing. Pursuant to the New York State  
17 Environmental Conservation Law Article  
18 57-0121(10) and the Central Pine Barrens  
19 Comprehensive Land Use Plan, notice is hereby  
20 given that the Central Pine Barrens Joint  
21 Planning and Policy Commission will hold a  
22 public hearing on Wednesday, October 17th, 2018  
23 on the matter of a Core Preservation Area  
24 Extraordinary Hardship Waiver. The name of  
25 today's project is the Eagan Dittmer House Core

1 P R O C E E D I N G S

2 Preservation Area Hardship Waiver Application.

3 And John, did you have some remarks  
4 you wanted to make before we get started or --

5 MR. PAVACIC: Well, this is just that  
6 the first of two hearings that we're having  
7 today. So just to distinguish this, this is --  
8 this first hearing is in regard to a Hardship  
9 Waiver for development on this, this lot,  
10 lot 36. And the second hearing has to do with  
11 a Pine Barrens Credit Letter of Interpretation  
12 appeal.

13 So two different matters, so we just  
14 want to make sure that we distinguish the two  
15 of them. So right now, this hearing that is  
16 being open is on the Hardship Waiver.

17 CHAIRWOMAN MEEK: Okay.

18 MR. BARON: Mr. Milazzo, do you think  
19 at this time we can make an application to  
20 consolidate both issues into the one hearing.

21 MR. MILAZZO: I don't -- I -- that's  
22 exactly why we just made that statement.

23 CHAIRWOMAN MEEK: Yeah.

24 MR. MILAZZO: My problem with that is  
25 I think the record will get confused. And I

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2 would like to -- you have -- you're entitled to  
3 your hearings. But if we keep the two issues  
4 distinct, it may be easier for someone to  
5 review it in the future.

6 MR. BARON: All right. Give me one  
7 moment.

8 MR. MILAZZO: I apologize, but I just  
9 think it's going to keep the record cleaner --

10 MR. BARON: I understand.

11 MR. MILAZZO: -- for everybody.

12 MR. EAGAN: Let me ask, are we allowed  
13 to say everything twice?

14 MR. MILAZZO: That's fine. You can  
15 say everything twice. We don't care.

16 (Laughter.)

17 MR. MILAZZO: And we're going to do  
18 the same thing, cause there's -- it is the same  
19 parcel, so we're going to repeat --

20 MR. PAVACIC: Do you want Julie --

21 MR. MILAZZO: -- twice. Yeah, that's  
22 fine.

23 MR. PAVACIC: -- do you want Julie to  
24 go first?

25 CHAIRWOMAN MEEK: Yeah. Let's have

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2 Julie go first. That's a good idea.

3 MR. MILAZZO: I just think it will be  
4 easier to have them one after -- yes, you'll  
5 have two decisions and I think --

6 MR. BARON: It's going to be pretty  
7 much the same issues being raised in both  
8 applications.

9 MR. MILAZZO: And we -- we're -- I  
10 think that it will be easier for everyone in  
11 the future maybe to have a clean record on both  
12 ends.

13 MR. EAGAN: Who are you referring to?

14 MR. BARON: Yeah, go ahead.

15 CHAIRWOMAN MEEK GALLAGHER: Yeah, and  
16 I think maybe we could have Julie go first --

17 MR. MILAZZO: Yeah.

18 CHAIRWOMAN MEEK GALLAGHER: -- to lay  
19 out the background.

20 MS. HARGRAVE: Okay, thank you.

21 And so you have the staff report.  
22 It's the blue binder. The Credit appeal will  
23 be this white one that Jerry will handout later  
24 on.

25 So just to review the project, it's --

1 P R O C E E D I N G S

2 this is a 4,000 square foot parcel. It's  
3 wooded. It's in Yaphank. It's on an unopened  
4 road, Chesterfield Avenue. It's about 153 feet  
5 east of the road that's developed, County Road 21.

6 And the -- there was a prior  
7 application on this parcel received in 2015.  
8 And there were adjournments and cancelations of  
9 hearings, and the applicant withdrew that  
10 application. But it was the same project to  
11 develop this parcel and open the road for the  
12 development of the privately-held parcel.

13 And so as you know, the project is  
14 simultaneously under review for a Credit appeal  
15 and that's a separate application. The  
16 applicant did not submit any narrative to  
17 address the hardship criteria, so we don't have  
18 that for you.

19 And just to also -- so we'll look at  
20 the parcel for a minute. The applicant also  
21 owns two lots that are -- front on this road,  
22 County Road 21, but those are protected. They  
23 entered into conservation easements to protect  
24 those lots and received one Credit for each of  
25 those lots. So those are -- this is lot behind

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2 these two lots. And the lot does not align  
3 perfectly with the aerial and the tax map, so  
4 Jerry was able to create sort of a more  
5 realistic version of where the lot is, in terms  
6 of the relation to existing development on  
7 County Road 21.

8 And so just to go through the  
9 exhibits.

10 (Whereupon, Staff Exhibits A  
11 through M were received in evidence as  
12 of this date.)

13 MS. HARGRAVE: Exhibit A is the staff  
14 report, and this reviews the information on the  
15 property and the environmental information.  
16 Again, this -- the property is wooded and  
17 contains natural Pine Barrens vegetation.

18 And I'm sorry, just go to go back, the  
19 owner is Dittmer and Egan. And Mr. Egan, James  
20 Egan purchased this part of ownership of this  
21 parcel in 2017 for \$10. So that's owned again  
22 by James Egan and Henry Dittmer.

23 We have received information from the  
24 Natural Heritage Program that they have new  
25 records of species and ecological communities

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2 in this area, but we don't have their letter  
3 yet. We're still waiting for it. So they're  
4 going to update the letter that they had issued  
5 in 2015 when this parcel was under review. So  
6 we'll wait for that.

7 And this is obviously in the  
8 Hydrogeological Zone III where depth to  
9 groundwater is approximately 20 feet. The site  
10 is generally flat. There's no major steep  
11 slopes.

12 The State Historic State Preservation  
13 Office says there are no cultural or historic  
14 resources eligible or present potentially on  
15 the site, so that is not an issue.

16 County Road 21 is listed in the Pine  
17 Barrens Plan as a scenic resource. So you will  
18 see in one of the exhibits, some photographs  
19 from the road front that show that much of this  
20 area, as you can see in study area map, is  
21 about three-quarters of the area is in the  
22 Core. And it's significantly protected with  
23 un-fragmented open space and public land owned  
24 by the County and the Town of Brookhaven.

25 So the study area, just to go over the

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2 study area, it's about a one-half mile radius  
3 of the project site, around the project site.  
4 It includes about 450 to 500 acres. And again,  
5 it's significantly contains the un-fragmented  
6 open space, publicly-owned land.

7 This parcel is in the Map called  
8 Flower City Park. It was filed in the 1920s.  
9 And there are a number of privately-owned  
10 parcels that still exist in this public --  
11 in this Flower City Map, but much of it has  
12 also -- a lot of the parcels have also been  
13 protected by the County as nature preserve.

14 And the site is adjacent to a parcel  
15 that's 10,000 square feet. But the parcel  
16 right there on the east side, that was denied a  
17 Core hardship in February, 2016 under the owner  
18 of Henry Dittmer. And that project -- or that  
19 decision has been in litigation since then.

20 And just to go through the study area  
21 a little more, about 175 acres of open space is  
22 just on the east side of County Route 21 in  
23 this study area. And the west side also has at  
24 least about 100 acres. And there is a critical  
25 resource area as well, to the southwest of this

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2 parcel. And that is defined in the Pine  
3 Barrens Plan.

4 The outside of the study area to the  
5 north is the Compatible -- I'm sorry, in the  
6 study area, but to the north is the Compatible  
7 Growth Area. And there's a subdivision on the  
8 west side of the road called Rustic Road. And  
9 then also to the north is the Middle Island  
10 Golf Course on the east side. And most of this  
11 study area is in the A-5, the 5-acre  
12 residential zoning district.

13 You'll see -- and on page 6 of the  
14 staff report, there are a number of other  
15 decisions that the Commission has made in the  
16 past from the 90s to 2010, for Core hardships  
17 for single-family houses. And those are  
18 different from this parcel, because they either  
19 fronted on a road or were on a road front  
20 exemption list to develop a single-family  
21 residence. And then -- or they may have had  
22 clearing -- a previous clearing or development  
23 that occurred prior to the Act. They may have  
24 had municipal approvals to build those lots.  
25 This lot does not have any approvals from the

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2 Town to develop.

3 CHAIRWOMAN MEEK GALLAGHER: Okay.

4 MS. HARGRAVE: And then again, this  
5 would also require the opening of a paper  
6 street to accommodate this development.

7 And as you'll see page 7 of the staff  
8 report, there are a few hardships that have  
9 been denied for a single-family residences.  
10 And they did not -- they were not on a road, or  
11 they didn't meet or qualify for a hardship for  
12 one or more reasons. In the information that  
13 starts on page 7 about water resources in terms  
14 of the Article 6 Health Department  
15 requirements, there are different definitions  
16 of a developer when it comes to this type of  
17 development. And I guess we have to get more  
18 information on how this applies to the project  
19 on the plan.

20 So this is a Type II action through  
21 SEQRA. And this was not coordinated with  
22 the -- with any other agencies, other than the  
23 State Historic Preservation Office. And it's  
24 not clear at this time what Town approvals  
25 would be required to open a road to build this

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2 lot in the way that's been proposed. And so  
3 that still remains unknown.

4 Again, the applicant did not submit a  
5 Hardship Waiver discussing or addressing the  
6 hardship criteria. So we're not sure on their  
7 arguments to obtain a hardship. So all of the  
8 questions are at the end of staff report. And  
9 I'll just review again the exhibits to the  
10 staff report.

11 The Exhibit B contains just these maps  
12 in a smaller version showing the parcel and  
13 where it is in relation to Yaphank Middle  
14 Island Road and the approximate location of the  
15 property in the study area.

16 And Exhibit C contains the map that  
17 was submitted with the application for a  
18 hardship that shows the lot -- it appears to  
19 have no setback for the dwelling. But this map  
20 is a little bit confusing. It's not exactly  
21 clear where this parcel exactly is. It's  
22 like -- but the -- like the septic system is  
23 straddling the property line it looks like. So  
24 if this were approved, I mean I'm not sure if  
25 this type of dwelling and facilities would be

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2 placed in those locations. But that's the plan  
3 that was submitted by the applicant.

4 And D is the deed for the parcel filed  
5 in 2017 that shows Henry Dittmer and James  
6 Eagan as the owners.

7 And E is the photographs of the  
8 property. Again from County Road 21, you  
9 can't, you know, see the parcel lines. So you  
10 can see what -- where the proposed road would  
11 be and set more than 100 feet back from the  
12 road is the parcel on the list. So this also  
13 contains other pictures of other structures in  
14 the -- on the road front. And most of, if not  
15 all of the houses, maybe all but one, are on  
16 County Road 21. They're developed in this  
17 area, were developed before the Pine Barrens  
18 Act. So there is a photo of the Preserve to  
19 the south, Warbler Woods, that was a large  
20 County Preserve.

21 And moving to Exhibit F, it contains  
22 the list of species that were identified by the  
23 Breeding Bird Atlas to potentially exist in  
24 this area that covers about a 3-mile square  
25 over the site. So we -- it's a large area that

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2 we could potentially be in that area. And  
3 Exhibit G contains the list of species of  
4 greatest conservation group that was issued by  
5 the DEC. And one of the warblers on this list  
6 is also on the Green Bird Atlas's, so it could  
7 potentially be utilizing the site as habitat or  
8 its origin as a residing habitat.

9 And the Exhibit H is the wetland map.  
10 There are significant wetland -- there's  
11 significant habit across the road and steep  
12 slopes on the west side of County Road 21. And  
13 that's going towards Carmen's River, so it  
14 makes sense that there's a whole wetland system  
15 there. And also to the east on the Map of  
16 Flower City Park, there is also wetlands  
17 present there east of the site.

18 And Exhibit I is the study area map  
19 showing, again, the Core Preservation Area as  
20 the dominant area in the study area and that  
21 it's significantly protected. And again, most  
22 of this development, as you can see on the next  
23 map from 1994, shows that most of the  
24 development in the area that's on the road  
25 existed at the time of the Pine Barrens Act.

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2 And Exhibit K is just showing you the  
3 zoning of the Town zoning A-5 for this, that  
4 covers this area significantly.

5 And Exhibit L is the decision on  
6 remittal that was recently submitted by the  
7 Commission for the lot 35 Core Hardship that  
8 was denied a couple of years ago.

9 And Exhibit M is the current letter of  
10 interpretation for the parcel, which allocates  
11 a .1 Pine Barrens Credit for the parcel.

12 And that's all have. Thank you.

13 If you have any questions on that  
14 information.

15 CHAIRWOMAN MEEK GALLAGHER: No.

16 Thank you, Julie, for providing that  
17 background.

18 Okay. Who's going to speak first?

19 MR. BARON: Mr. Eagan.

20 MR. EAGAN: I'm going to speak first,  
21 but that's just because I have --

22 MR. MILAZZO: Can we swear him in?

23 CHAIRWOMAN MEEK GALLAGHER: Yeah.

24 MR. EAGAN: Okay.

25 CHAIRWOMAN MEEK GALLAGHER: Oh, that's

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2 right -- that's right.

3 MR. MILAZZO: Typically we swear him  
4 in.

5 CHAIRWOMAN MEEK GALLAGHER: That's  
6 right.

7 THE STENOGRAPHER: Can you --

8 MR. EAGAN: We should -- maybe we  
9 should both just be sworn in.

10 MR. MILAZZO: He doesn't need to be.

11 MR. BARON: I don't need to be. I  
12 can --

13

14 (ARMAND EAGAN, was duly sworn.)

15 THE STENOGRAPHER: Can you state your  
16 name and address for the record?

17 MR. EAGAN: Armand, A-r-m-a-n-d,  
18 E-a-g-a-n.

19 And my address?

20 CHAIRWOMAN MEEK GALLAGHER: Address.

21 THE STENOGRAPHER: Yes.

22 MR. EAGAN: 114 Willis Avenue,  
23 Port Jefferson, New York 11777.

24 Okay. One of the -- the gleaming --  
25 I'm trying to find the word for it -- one of

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2 the blaring factors of this initial Pine  
3 Barrens analysis of my -- of the property in  
4 the surrounding area is this (indicating) map.  
5 Where was this map generated? What -- what  
6 exhibit is this?

7 MR. BARON: Exhibit I.

8 MR. EAGAN: Exhibit I?

9 MR. BARON: Yes.

10 MR. EAGAN: Where was Exhibit I  
11 generated from?

12 CHAIRWOMAN MEEK GALLAGHER: Well,  
13 Mr. Eagan, are you going to discuss --

14 MR. EAGAN: I -- I --

15 CHAIRWOMAN MEEK GALLAGHER: -- why you  
16 think you deserve a hardship?

17 MR. EAGAN: Yes. But first I -- if  
18 there's inaccuracies in the record, how can you  
19 make a proper decision?

20 CHAIRWOMAN MEEK GALLAGHER: Well, we'd  
21 like to hear from you and then we'll consider  
22 all the information.

23 So do you have a different map you'd  
24 like to present us with?

25 MR. EAGAN: Yes, and I'll provide it

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2 with some supplemental. This map, just for the  
3 purposes of our appeal, is completely  
4 inaccurate. There's approximately six parcels.  
5 Most of them are substandard on this map.

6 I can just tell by the -- the --  
7 there's one that -- not -- not highlighted that  
8 is vacant and available, just because I'm in  
9 negotiations to buy it. And it's -- it's  
10 available, it's not highlighted on the map. So  
11 how could there be -- you know, how could this  
12 be accurate?

13 MR. BARON: So what you're really  
14 asking for is the right to do a supplemental  
15 submission to include a map that more  
16 accurately reflects the actual status of the  
17 land as it is now?

18 MR. EAGAN: Yes.

19 MR. BARON: Okay. We would ask for  
20 that opportunity.

21 MR. EAGAN: And for the purposes of  
22 the study area, I -- I want to clarify to the  
23 Commission that if the allegation the  
24 Commission is trying to -- the assertion the  
25 Commission is trying to make is that I'm

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2 similarly situated to the other parcels within  
3 the study area, I'd like to most importantly  
4 start out this appeal by saying I have  
5 no freshwater-regulated -- DEC  
6 freshwater-regulated wetlands.

7 CHAIRWOMAN MEEK GALLAGHER: There's no  
8 mapped wetlands on your property, is that what  
9 you're trying to say?

10 MR. EAGAN: There is no, according to  
11 the map, the DEC website, which I recently  
12 discovered, there is no mapped freshwater  
13 wetlands preventing me from having road access  
14 to a paved, improved road. Whereas the other  
15 parcels on the map would be prevented from  
16 having access to a paved, improved road, due to  
17 DEC freshwater-regulated wetlands being  
18 blocking the road -- any possible road  
19 improvements on the map.

20 And that's -- that's an -- an  
21 important factor of this appeal, is that it  
22 would not be precedential in that respect,  
23 because it is impossible, I would say, with  
24 this Commission governing the land within the  
25 study area, for development of the inner

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2 parcels further than my piece right next door,  
3 from being developed due to the significant  
4 freshwater-regulated -- DEC regulated  
5 wetlands -- I know it's a mouthful -- wetlands  
6 on the map.

7 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

8 MR. EAGAN: So we don't share these  
9 characteristics. And therefore, I would make  
10 the claim that we are not similarly situated to  
11 the easterly portion of the map.

12 CHAIRWOMAN MEEK GALLAGHER: Okay.

13 Mr. Eagan, did you have information you were  
14 going to share with us? I mean did you have  
15 packets you were going to distribute or --

16 MR. EAGAN: You know, I wasn't -- oh,  
17 yeah, I wasn't ready to -- I didn't include  
18 this in here. I wasn't ready for this, 'cause  
19 I wasn't aware this was going to be an -- an  
20 issue for this appeal.

21 But now that we outlined -- thank  
22 you -- but now that we have it, if -- I'll  
23 provide the material in writing. Here's a  
24 packet. Well, it gets recorded, we have that  
25 too. Well, you might not get one. Oh no,

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2 there we go.

3 (Laughter.)

4 MR. BARON: You only have nine, so --

5 MR. EAGAN: Yeah.

6 MR. BARON: -- we share -- share a  
7 copy.

8 MR. EAGAN: Yeah, I only have nine.

9 CHAIRWOMAN MEEK GALLAGHER: Thank you.

10 MR. MILAZZO: Here (indicating),  
11 there's one extra one on the top. Yeah,  
12 there's one here.

13 MR. EAGAN: Oh.

14 MR. MILAZZO: You can float it down  
15 there.

16 MR. EAGAN: There's a staple on top of  
17 the staple. The Southampton guys can share.

18 MR. MILAZZO: So you're going -- so --  
19 so these will be Eagan A, B, C, D and E.

20 (Whereupon, Eagan Exhibits A  
21 through E were received in evidence as  
22 of this date.)

23 MR. EAGAN: Can I use this board?

24 MR. BARON: Yes.

25 CHAIRWOMAN MEEK GALLAGHER: You -- you

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2 can use that board.

3 MR. EAGAN: Okay.

4 MR. MILAZZO: All right, so we're  
5 gonna mark that as Eagan Exhibit A, B, C, D and  
6 E. And it includes a -- well, do you want  
7 to -- do you want to introduce your documents?

8 CHAIRWOMAN MEEK GALLAGHER: Yeah.

9 MR. BARON: Yes, into the record.

10 CHAIRWOMAN MEEK GALLAGHER: Okay.

11 MR. EAGAN: I don't want to --

12 MR. MILAZZO: It's a packet entitled  
13 hardship criteria.

14 CHAIRWOMAN MEEK GALLAGHER: Oh, is  
15 that what it -- that says?

16 MR. MILAZZO: And Exhibit A is  
17 minutes -- draft Commission minutes from  
18 June 24, 1998.

19 CHAIRWOMAN MEEK GALLAGHER: Oh, going  
20 old school.

21 MR. MILAZZO: Exhibit B is a  
22 Commission appeal, a resolution from August of  
23 1998.

24 Exhibit C is a decision of the  
25 Commission from 1995, June.

1 P R O C E E D I N G S

2 Exhibit D is an aerial 2000 -- a  
3 document labeled 2010 aerial from the Town of  
4 Brookhaven tax map, I'm assuming 200-271-1/21.

5 And Exhibit E is an aerial and  
6 accompanying documents from the Suffolk County  
7 Department of Real Property Tax Service of a  
8 parcel identified as 0600-137-04.11.005.

9 And there are two or three pages of  
10 documents behind Exhibits D and E, and C has  
11 two documents behind it. And A has one or two  
12 pages behind it as well. And the hardship  
13 criteria is -- has one, two -- one, two,  
14 three -- four pages behind it. Is that fair  
15 and accurate, Mr. Baron?

16 MR. BARON: Yeah. Respectfully  
17 though, can I have Mr. Eagan read in the  
18 exhibits 'cause he has a slightly different --  
19 just to protect the record.

20 MR. MILAZZO: Absolutely. I just  
21 wanted to make sure we identified them --

22 MR. BARON: Fair enough.

23 MR. MILAZZO: They're your exhibits.  
24 You can introduce them as you wish.

25 MR. BARON: So at this time just for

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2 purposes of continuity, can Mr. Eagan read --

3 MR. MILAZZO: Perfect.

4 MR. BARON: -- into the record his  
5 understanding of what the exhibits represent  
6 slowly.

7 MR. EAGAN: Okay.

8 Exhibit A is a decision from 1998.  
9 It's the Commission minutes regarding the  
10 Woodstock Company as a 40 by, identically  
11 similarly situated in location, proximity,  
12 everything, every such related to the Dittmer  
13 parcel. So it's identically similarly  
14 situated. On this, it says Mr. Cowen observed  
15 that it was substantially similar to a road  
16 front parcel. That was the purpose for  
17 including this exhibit --

18 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

19 MR. EAGAN: -- with the associated  
20 resolution also from 1998, again regarding  
21 Woodstock, and an aerial photograph of the said  
22 property.

23 Exhibit B is just a resolution of  
24 Doris Fitcher. That's regarding 200-382,  
25 lot 19. It's two pages. There's no aerial

1 P R O C E E D I N G S

2 photograph or other materials in that.

3 Exhibit C is Amy Madelung -- Made --  
4 Madelung, 200-529-1-18 and 36 Marlboro Avenue  
5 in Yaphank. And there is an associated aerial  
6 photograph connected with this here exhibit and  
7 a tax map from who-knows-what year.

8 Exhibit D is an aerial photograph from  
9 2010 [sic] -- 2016, excuse me of the  
10 Kristiansen, Rita Kristiansen application, and  
11 that has a resolution attached to it. It's  
12 dated 1996. It's for a hardship application.  
13 There is a staff report, a complete staff  
14 report attached along with the resolution, also  
15 dated March 20, 1996. The resolution is dated  
16 March 20, 1996, so they're both dated the same  
17 thing. There's a radius map. I believed it's  
18 provided by Brookhaven Town, but it's  
19 insignificant. And we have here a survey from  
20 the FOIL request. I don't see a date on the  
21 survey, but I'm sure if we had a bigger copy of  
22 the survey, we would be likely to have the date  
23 on it.

24 CHAIRWOMAN MEEK GALLAGHER: The survey  
25 is dated July 8th, 1988 it looks like.

1 P R O C E E D I N G S

2 MR. EAGAN: Wow, I didn't even see  
3 that.

4 CHAIRWOMAN MEEK GALLAGHER: Revised  
5 September 9th and then revised -- it's revised  
6 a couple times. The last revision, it looks  
7 like March 15th, 1991 or October 24th, 1994,  
8 yeah.

9 MR. EAGAN: Well, that's when it was  
10 surveyed, but when was it drawn? That's what I  
11 want to know.

12 CHAIRWOMAN MEEK GALLAGHER: Oh, well.

13 MR. EAGAN: Usually you have a date on  
14 every document.

15 CHAIRWOMAN MEEK GALLAGHER: It says  
16 it was surveyed July 8th, 1988; right, by  
17 William R. Simmons.

18 MR. EAGAN: Well, we'll agree that  
19 it's 1988 then I guess.

20 CHAIRWOMAN MEEK GALLAGHER: Yeah, it's  
21 your document.

22 MR. EAGAN: What?

23 CHAIRWOMAN MEEK GALLAGHER: It's your  
24 document you're submitting for the record.

25 MR. EAGAN: Yeah, but it's just, you

1 P R O C E E D I N G S

2 know, 1988.

3 MR. BARON: We'll stipulate it, 1988.

4 CHAIRWOMAN MEEK GALLAGHER: Fine.

5 MR. BARON: 1988.

6 MR. EAGAN: I had big hair back then.

7 (Laughter.)

8 MR. BARON: You weren't born in 1988.

9 (Laughter.)

10 MR. EAGAN: As of 10 years -- 10 years  
11 later I was born.

12 11 -- 11.5, let's see, this is a road  
13 front exemption list, Chapter 9 of the CLUP.  
14 And this is the lot, section, block  
15 0600-137-04-11.5, Riverview Avenue. It's a  
16 road on the road front parcel exemption list,  
17 which means that no review of the Commission is  
18 necessary in order for this parcel to be  
19 developed. From the aerial, it's clear it's  
20 located on the Peconic River. So that was the  
21 purpose of the aerial. Also, it's located on  
22 an un-open paper street, on an old filed map.  
23 So that was the purpose of this  
24 exhibit. And those were all the materials in  
25 there. The front page, for everybody to know,

1 P R O C E E D I N G S

2 is it's the hardship criteria --

3 CHAIRWOMAN MEEK GALLAGHER: Yes.

4 MR. EAGAN: -- from the CLUP. And so  
5 we have that in both the staff report and here.  
6 Nobody will be talking about that.

7 MR. BARON: Respectfully, in  
8 connection -- so -- so we're doing each appeal  
9 separately, each hearing separately?

10 CHAIRWOMAN MEEK GALLAGHER: Right,  
11 yes.

12 MR. MILAZZO: I think it'll just keep  
13 the record cleaner.

14 MR. BARON: Okay. Fair enough.

15 MR. MILAZZO: I mean and there will --  
16 we'll repeat each other and that's okay.

17 MR. BARON: Okay.

18 MR. EAGAN: Identically though?

19 MR. MILAZZO: That's okay.

20 MR. EAGAN: Okay.

21 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

22 MR. BARON: So you don't want to refer  
23 to what was already said, you want a clean -- a  
24 new record?

25 MR. MILAZZO: I -- I think the new

1 P R O C E E D I N G S

2 record for everybody.

3 MR. BARON: Fair enough.

4 MR. MILAZZO: For all parties, we'll  
5 be needing that.

6 MR. BARON: And each decision might be  
7 slightly different or --

8 MR. MILAZZO: Yeah, that's right.

9 MR. BARON: Okay, fair enough.

10 We're here initially to talk about the  
11 40 by 100 Dittmer, slash, Eagan Appeal. We're  
12 requesting a one full Pine Barren Credit or a  
13 Hardship Exemption to construct a single-family  
14 home.

15 We are before the Commission today  
16 requesting either one full Pine Barren Credit  
17 or a Hardship Exemption to construct a  
18 single-family home on the property, and open  
19 Chesterfield Road where the total clearing  
20 involved is approximately 5,000 square feet.

21 We would like to point out at the  
22 beginning of this hearing that no Commission  
23 member or staff member has been to the site to  
24 survey the vegetation. That's our contention.  
25 Let it also be noted that the section -- that

1 P R O C E E D I N G S

2 this section of the Pine Barrens does not  
3 contain any DEC freshwater wetlands according  
4 to the DEC's website, nor are there any  
5 wetlands located on the site. It is important  
6 to note also that the application has no  
7 beneficial use of the parcel.

8 Lastly, in relation to this parcel,  
9 please be aware that within -- within  
10 immediate -- within the immediate surrounding  
11 area of this parcel, on the same filed map is a  
12 road front parcel. The significance of this  
13 observation is to characterize the area  
14 encompassing -- encompassing the parcel as  
15 being substantially developed, as defined  
16 by Chapter 9 of the CLUP, referencing see  
17 Exhibit E.

18 Uniqueness. This property is unique  
19 because there is no other property like it in  
20 the Core Area. Flower City Park, herein  
21 referred to as Flower, is the only filed map  
22 located in Brookhaven Town that -- that  
23 contains a substantially-developed area which  
24 has a parcel located on a paper street, within  
25 such proximity to the road that is feasible to

1 P R O C E E D I N G S

2 be developed. Furthermore, development of this  
3 parcel will not promote development on Flower,  
4 because Flower, although at first glance  
5 contains 23 vacant privately-owned parcels,  
6 this is the closest parcel to the nearest  
7 improved road. Moreover, shortly further in  
8 the map is a significant block of DEC-regulated  
9 freshwater wetlands, preventing even so much as  
10 accessing the inner properties by foot, whereas  
11 this property is located over a hundred feet  
12 away from the wetlands, removing it from the  
13 jurisdiction of the DEC. Lastly, it is unique  
14 that in based on the size of the lot, it is our  
15 position that the development of this parcel is  
16 the very definition of orderly and compact  
17 development, because it is neighboring a  
18 single-family home.

19 Hardship criteria. It is imperative  
20 for the Commission to be aware, prior to any  
21 discussion of precedent, that the hardship  
22 criteria does not require that a parcel  
23 possessed -- possess road frontage in order to  
24 be granted a Hardship Exemption, nor it is --  
25 nor is it a criteria, in part or completely, to

1 P R O C E E D I N G S

2 be taken into consideration by the Commission  
3 when considering an application. The  
4 Commission is limited in its review as to  
5 whether or not the application meets the  
6 criteria as set forth in ELC {sic} 57-0121(a)  
7 and (c). Along with considering the  
8 applicant's standing with these criteria, the  
9 Commission must follow its own prior precedent  
10 or make substantial differentiations.

11 It should be noted that in the  
12 Supreme Court in the matter of Henry -- Henry  
13 Dittner -- Dittmer versus John Pavacic, et al.,  
14 Index --

15 CHAIRWOMAN MEEK GALLAGHER: Pavacic.

16 MR. BARON: -- Number 6 -- 2016-2657  
17 before the Honorable Joseph Farneti, and  
18 further citing the case of Hamptons v. Zoning  
19 Board of Appeals of the Incorporated Village of  
20 East Hampton, 98 Appellate Division 3rd and 38,  
21 and 950 New York Sub 2nd 2012, both held that  
22 an agency's determinations -- an agency's  
23 determination which neither adheres to its own  
24 prior precedent, nor indicates its reasons for  
25 reaching a different result on essentially the

1 P R O C E E D I N G S

2 same facts is arbitrary and capricious, and is  
3 subject to being overturned by the Court.

4 It is our position that the  
5 development of this parcel is the very  
6 definition of orderly and compact development,  
7 because it is neighboring a single-family home  
8 and there's a commercial structure right down  
9 the road.

10 We also maintain the position that the  
11 granting of this hardship is the minimum relief  
12 necessary, in order to relieve the hardship  
13 bestowed upon us by the Act itself. It would  
14 be a hardship if the Commission does not grant  
15 this exemption and requires that we accept a  
16 PBC instead, because we do not -- because we do  
17 not immediately have to -- have a place to  
18 apply this PBC, and we would be required to be  
19 thrown into a market where everyone is in the  
20 same position and the best price wins. Whereas  
21 if this hardship is to be granted, this,  
22 building lot may have a higher value than other  
23 participants in the Credit Program are willing  
24 to sell it for, whom may have a more aggressive  
25 market approach and may be able to sell the PBC

1 P R O C E E D I N G S

2 more efficiently and cost effectively than we  
3 are. Contrary to a PBC, there is a shortage of  
4 affordable single-family homes in the area, and  
5 this lot would be more likely to sell quicker  
6 and for a higher value than the PBC we are  
7 willing to accept, if the Commission is  
8 compelled not to grant the exemption. The  
9 hardship is not a result of inaction by the  
10 applicant, because Mr. Eagan acquired interest  
11 to the property, not only recently, and notice  
12 to -- and notice law is no longer applicable in  
13 New York State. The rights and privileges run  
14 with the land, not the applicant.

15 Maintenance of value. In the  
16 introduction to the Pine Barren Credit Program,  
17 in the CLUP states that it is the primary  
18 purpose of the Pine Barrens Credit Program is  
19 to maintain the value in lands designated for  
20 preservation or protection under the Plan, by  
21 providing for the allocation and use of Pine  
22 Barrens Credit, PBCs. See CLUP's Section 6.1.

23 Precedent for one full Pine Barren  
24 Credit. In our Exhibit A, Woodstock  
25 application, this application is identically

1 P R O C E E D I N G S

2 similarly to -- situated to the current  
3 application. It was declared by the  
4 then-director of the Pine Barn Commission that  
5 this parcel is substantially similar to the  
6 road front parcel, Ray Corwin (phonetic). The  
7 parcel qualified -- qualified for a 280A road  
8 opening prior to the Act, as well as a building  
9 permit. It is specified under the CLUP that  
10 approvals granted prior to the Act do not  
11 matter, all parcels must go for review.

12 It is important to keep in  
13 consideration that for purposes of computing  
14 the allocation of the Pine Barrens Credit, a  
15 parcel of land is defined as separately  
16 assessed, and this is under the Suffolk  
17 County Real Property Tax Parcel. See CLUP 6.3,  
18 Tuccio -- Tuccio versus Pine Barrens 2007.

19 Exhibit B. In this application, it  
20 was alleged that lot 19, among others, was  
21 single and separate. Lot 19 is located over  
22 350 feet and away from an approved road and  
23 needs similar variances for a house to be built  
24 on the property, and was granted one full  
25 Pine Barren Credit for the following reasons:

1 P R O C E E D I N G S

2 The parcel's proximity to an improved  
3 road;

4 The parcel's proximity to utilities.

5 The precedent for a Hardship  
6 Exemption, Exhibit C, the Madelung Hardship.  
7 This -- this application is identically  
8 similar -- similarly situated to the current  
9 application. The hardship exemption was  
10 granted for the Madelung property, despite  
11 having beneficial use of the property,  
12 agriculture. The applicants were asked at the  
13 hearing to answer the hardship criteria, to  
14 which they alleged a financial hardship, which  
15 hardship criteria specifically states is not  
16 grounds for the granting of a hardship  
17 exemption.

18 We'll go on to Exhibit D, the  
19 Kristiansen Hardship Application. This  
20 application was granted a hardship exemption.  
21 The applicant had a garage constructed on the  
22 property, and a dog pen, and also the property  
23 was used for boat storage, or in short,  
24 beneficial use. This property is located on  
25 the Peconic River. Upon the Commission -- upon

1 P R O C E E D I N G S

2 the Commission staff inspection, it was also  
3 discovered that endangered species and life  
4 plant were located on the property, as well as  
5 surface water wetlands. The water table,  
6 according to the survey, was 2 feet from the  
7 surface. The Commission granted the  
8 application without any of the hardship  
9 criteria being answered and substantial  
10 environmental impacts being imminent. Only a  
11 260 front -- only a 260 front -- 61 square foot  
12 house would have been permitted under the Town  
13 Code. The Commission concluded that the  
14 development of an 8,000 square foot house would  
15 not have been impact on the Core, given its  
16 current location.

17 Exhibit E. The parcel was part of a  
18 2001 CLUP amendment adding a Core road front  
19 exemption list and allowing some parcels  
20 located in the Core area to be built on without  
21 review by Commission -- by the Commission.  
22 This parcel is on the list. The parcel is  
23 located on a paper street, unimproved,  
24 requiring 700 feet to gain access to the  
25 nearest improved road. The parcel is located

1 P R O C E E D I N G S

2 on the Peconic. This parcel is significantly  
3 more environmentally -- environmentally  
4 significant than the subject of this appeal.  
5 The road front exemption is -- is annexed.

6 Conclusion. In section triple 'i' of  
7 the hardship criteria, it states that the  
8 granting of a residential development right is  
9 considered an extraordinary hardship, as  
10 compared to the granting of a hardship  
11 application.

12 The Fifth Amendment of the United  
13 States Constitution and Article 1 Section 7(a)  
14 of the New York State Constitution provides  
15 that in the event that property is taken for  
16 public use, the owner must receive just  
17 compensation. The search for determining  
18 exactly what constitutes just compensation is  
19 the paramount issue in any condemnation case.  
20 The Constitution requires the property owner be  
21 indemnified, so that he or she may be put in  
22 the same relative position insofar as possible,  
23 as if the taking had not occurred. If either a  
24 hardship exemption is not granted by this  
25 Commission or a full residential development

1 P R O C E E D I N G S

2 credit, i.e. one Pine Barren Credit is not  
3 granted, this would constitute a taking without  
4 just compensation.

5 And I think Mr. Eagan has something to  
6 add.

7 MR. EAGAN: I want to see if anybody  
8 has any questions before I add my --

9 MR. BARON: Closing remarks.

10 (No response.)

11 MR. EAGAN: Wonderful.

12 CHAIRWOMAN MEEK GALLAGHER: Nope.

13 We're happy to hear from you, Mr. Eagan.

14 MR. EAGAN: Okay.

15 I went through this staff report and I  
16 crossed out some things that didn't relate to  
17 the issues, or maybe I -- I would consider them  
18 conclusory is the word. So I went through some  
19 of the applications that you presented and I  
20 tried to -- I didn't include them today,  
21 because I didn't know they would be part of the  
22 hearing. But you use them, so I'm gonna try  
23 and do it as best I can from memory. But I'll  
24 submit them in the supplemental writing  
25 material later on.

1 P R O C E E D I N G S

2 Cox, I wanted to discuss with this  
3 Commission because the Cox application, I'm  
4 sure most of you aren't familiar with it,  
5 because it was from 1995. But it involved  
6 two -- one property that was, prior to the Act  
7 split into two properties, and then remerged  
8 back into one prior to the inception of the  
9 Act.

10 There is a partially built house on  
11 it, but there was an approval for two --  
12 construction of two houses. Now, the  
13 applicants went for a Hardship Exemption. And  
14 the reason for their hardship, in their own  
15 words, was that they got a divorce and they  
16 didn't -- they may -- and they didn't do  
17 something in time to prevent re-merger. So  
18 they didn't keep the property single and  
19 separate.

20 Now, there was a partially-constructed  
21 house on the property. And the Commission, in  
22 1995, allowed these people to construct the  
23 rest of the house, which is completely  
24 reasonable.

25 Now, above that, the Commission

1 P R O C E E D I N G S

2 allowed the -- the property to be re-split. I  
3 don't think that conformed to zoning. The  
4 zoning in the area was either 5- or 10-acre.  
5 And the properties weren't single and separate,  
6 so that in and of itself is ridiculous.

7 And above that, the hardship criteria  
8 specifically outlines that in order for the  
9 hardship to be granted, it must be the minimum  
10 relief necessary in order to alleviate a  
11 hardship. And also, it -- the applicant has to  
12 prove that they do not have beneficial use of  
13 the property.

14 Now, for -- for my purposes, let me  
15 relate this back to my case --

16 CHAIRWOMAN MEEK GALLAGHER: Thank you.

17 MR. EAGAN: -- because it is -- is  
18 important.

19 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

20 MR. EAGAN: We completely agree, if  
21 you have half a house built, you should be able  
22 to -- it's -- it's a hardship if you can't  
23 finish it, of course. But to split it where it  
24 doesn't meet zoning and to allow them more  
25 beneficial use than they would already have if

1 P R O C E E D I N G S

2 the minimum relief necessary was granted, that  
3 might be confusing. So the minimum relief  
4 necessary would be the -- the allowance of the  
5 one house. And that would be considered  
6 beneficial use.

7 They wouldn't have been entitled to  
8 sell their hardship, nor is a divorce grounds  
9 for granting a hardship. It specifically  
10 states that -- the hardship criteria says that  
11 it shouldn't be -- in order to grant a  
12 hardship -- it's (iii) -- are not the result of  
13 any action or inaction by the applicant or its  
14 owner, predecessors in title, including any  
15 transfer of contiguous lands that were in  
16 common ownership on or after June 1st, 1993.  
17 So that is the very -- the -- the very --  
18 what's the word I'm looking for --

19 MR. BARON: The essence.

20 MR. EAGAN: -- the very essence of  
21 what you're -- what you're not supposed to  
22 approve, and it was approved by this  
23 Commission.

24 You know again, I'll get -- I'm going  
25 to relate it back right now. Now, we have here

1 P R O C E E D I N G S

2 a 40 foot piece of property that needs 103 feet  
3 of road -- or a hundred -- a hundred feet of  
4 road for this purpose, 103, 110 at this point.  
5 So that would be approximately 5-and-change  
6 thousand square feet of clearing, where this  
7 property, the Cox property required  
8 significantly more clearing than it would take  
9 to develop the Dittmer Dad property, Dittmer,  
10 James Eagan. We don't call him James Eagan in  
11 the house, you call him Dad.

12 But how could this -- this is an  
13 environmental law. Respectfully, it's not a  
14 zoning board, it's an environmental law. So  
15 how, environmentally, is the development of a  
16 40 by a hundred and the associated road more  
17 detrimental than the Cox application? And then  
18 I'm gonna go over to Kristiansen on the -- the  
19 left over here (indicating) --

20 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

21 MR. EAGAN: -- which is one of my  
22 exhibits.

23 And do I have a big poster of  
24 Kristiansen? No, I don't. I wish I did.

25 But it's Exhibit D -- D -- D. Rita

1 P R O C E E D I N G S

2 Kristiansen had a garage previously built on  
3 the property.

4 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

5 MR. EAGAN: And she had approval to  
6 build a house on the property, prior to the  
7 inception of the Act --

8 CHAIRWOMAN MEEK GALLAGHER: Uh-huh.

9 MR. EAGAN: -- which would be  
10 important if -- if the CLUP didn't specifically  
11 outline the very important point that prior  
12 approvals for anything less than a major  
13 subdivision don't matter to the Commission.

14 I'm trying to put that in better  
15 words. Basically, prior approvals don't  
16 matter. And we can point that out in the CLUP.  
17 If you'd like, I'll supplement that in -- later  
18 on with my packet. Prior approvals don't  
19 matter under the CLUP, I'll get that section  
20 for you.

21 So this woman, Rita Kristiansen, had a  
22 parcel which fronted on a road. She had a  
23 garage, boat storage, and a dog pen on the  
24 property and was allowed a hardship. I don't  
25 think she answered the hardship criteria at

1 P R O C E E D I N G S

2 all, if I read -- I read the transcript and  
3 the -- the staff report. And she didn't answer  
4 the hardship criteria at all.

5 It was granted, so they said, the  
6 limit of clearing and disturbance. So we look  
7 at this, it's on the Peconic River. They  
8 granted significantly more clearing, for about  
9 at least a thousand square feet more clearing  
10 than we're asking for. This property has more  
11 substantial zoning relief variances than we  
12 would be -- we would be requesting based on the  
13 zoning. It's located in the A-10 zoning  
14 district. And it is on the Peconic River,  
15 which is the -- the pinnacle of environmental  
16 significance as it relates to Long Island.

17 The water table is 2 feet. So our  
18 water table is 8 feet or 9 feet I think. And  
19 this water table is 2 feet. So to put a  
20 sanitary system on the Kristiansen property  
21 would be -- I would consider that a substantial  
22 impairment. And I'm pretty sure that any  
23 environmentalist would consider that a  
24 substantial impairment to the resources of the  
25 surrounding area, which are the Core Area. It

1 P R O C E E D I N G S

2 would definitely, most definitely affect the  
3 Peconic River.

4 And the staff report most importantly  
5 pointed out that this property, there was a  
6 survey done. The Commission staff was on the  
7 property and they pointed out the freshwater  
8 wetlands, the leatherleaf, highbush, blueberry,  
9 sweet pepper-bush, fetterbush, buttonbush,  
10 winterberry. I didn't even know these things  
11 existed and I learned about them from the  
12 Kristiansen report.

13 Let's see what other kind of stuff is  
14 on here. But it doesn't say -- specifically  
15 say what types of endangered are species on  
16 there, and but it does say there are endangered  
17 species and plant life on the property. And  
18 this application was granted.

19 And I understand that road frontage  
20 may seem like it's significant as it relates  
21 to granting of hardships. But again,  
22 respectfully, this is not a zoning board. This  
23 is a -- an agency which is governed by a  
24 criteria known as the hardship criteria. And  
25 the hardship criteria outlines specific

1 P R O C E E D I N G S

2 criteria, in which the Commission must follow  
3 and which an applicant meet, in order to be  
4 granted a hardship.

5 Now, the most of these applications  
6 that the Commission used in their staff report,  
7 including and especially Goldstein, I took it  
8 out. The night before I took it out of this  
9 (indicating), my exhibits here. And I  
10 should have left it in for that purpose,  
11 Mr. Goldstein, the night before.

12 Mr. Goldstein did not answer the  
13 hardship criteria in writing or at the hearing  
14 when he was asked. Furthermore, Mr. Goldstein,  
15 although he is located on a developed, improved  
16 road which at face value would seem like a  
17 differentiation, Mr. Goldstein filled out in  
18 his application, pre-application, that the  
19 parcel was undisturbed, in his own writing,  
20 undisturbed. Furthermore, his parcel was not  
21 located in what -- the same type of area we're  
22 located in, called a substantially-developed  
23 area, in the Commission's own words.

24 If you want to flip through Exhibit E  
25 to justify that claim, it says here that --

1 P R O C E E D I N G S

2 that in the Core Preservation Area,  
3 construction of one single-family home and  
4 customary accessory uses thereto on any vacant,  
5 privately-owned parcel located or taking access  
6 from an existing improved public road where  
7 contained within a substantially-developed  
8 area, as defined. So if you need -- if you're  
9 a road front parcel, you are defined as being  
10 in a substantially-developed area. Madelung,  
11 the parcel in front of Madelung was located --  
12 was a -- it was located on this list, this  
13 Chapter 9 road frontage exemption list, which  
14 would define it as a substantially-developed  
15 area.

16 Now, your 450-acre radius, your  
17 half-mile radius here includes the road  
18 front parcel which is located in a  
19 substantially-developed area. Now, when we  
20 look at it arbitrarily, we can say that, yeah,  
21 this circle has all this bad, but we don't  
22 point out the good. I like to see the positive  
23 in every person. And I like to think of the  
24 same for land too. I see the positive in every  
25 piece of land.

1 P R O C E E D I N G S

2 Now, this piece of land is located in  
3 a substantially-developed area, whereas all of  
4 these precedents I presented today, except --  
5 except for Madelung, are not located in what is  
6 considered substantial-developed areas, and  
7 they were granted.

8 And -- and Woodstock -- but that's the  
9 matter of the Credit appeal, so we won't get  
10 into that in this appeal.

11 So my point being is road frontage is  
12 not a criteria for hardship. The criteria for  
13 the hardship is, is it the minimum relief  
14 necessary, whereas the Extraordinary Hardship  
15 would be the acceptance of a Pine Barren  
16 Credit, and that would be bestowed upon us by  
17 the Commission. And road frontage is not a  
18 criteria in which the Commission is -- is  
19 obligated to review. It's -- it's not laid out  
20 in the CLUP at all, except for in Section 9  
21 where it says that parcels taking access from  
22 an existing improved public road are eligible  
23 for the road front exemption list.

24 So if anything, the only inkling of  
25 road front -- of anything to do with road

1 P R O C E E D I N G S

2 frontage states that you can have a -- a  
3 buildable lot that doesn't have road frontage.  
4 That's the only inkling of anything to do with  
5 road frontage in the CLUP.

6 My point is road frontage is not a  
7 matter in which the Commission is obligated,  
8 nor outlined to review. And doing so is going  
9 above and beyond the Commission's, not quite  
10 jurisdiction, but obligations. And it would  
11 seem as though it's tainted in a way where the  
12 chips are set up against us.

13 So I would like for the Commission to,  
14 most importantly, reverse any opinions  
15 regarding their -- their -- how do I say it --  
16 their preconceived notion that road frontage is  
17 a criteria, 'cause it's not. It's based on the  
18 minimum relief necessary and the other hardship  
19 criteria laid out in here (indicating):

20 Not the result of any action or  
21 inaction by the applicant;

22 Relate to arise out of the  
23 characteristics of the subject property;

24 And do not apply to, affect property  
25 in the immediate vicinity.

1 P R O C E E D I N G S

2 And so I answered that in the  
3 beginning of the hearing regarding this map  
4 here (indicating). My property doesn't affect  
5 any property on the -- on the map, except for  
6 of course my piece next door which is under  
7 review by the Justice Farneti.

8 MR. MILAZZO: I just want to -- yeah,  
9 I just want to ask a question. So the -- so  
10 the -- you have -- who owns what?

11 MR. EAGAN: Who owns what?

12 MR. MILAZZO: So you own -- you own a  
13 piece adjacent?

14 MR. EAGAN: Yeah.

15 MR. MILAZZO: You have half interest  
16 in the piece?

17 MR. EAGAN: I answer phones and I  
18 type.

19 MR. MILAZZO: Okay, so --

20 MR. EAGAN: I don't know anything  
21 about it.

22 MR. MILAZZO: -- so are you on a deed  
23 for a piece of property adjacent to this?

24 MR. EAGAN: You know, we own a lot of  
25 land.

1 P R O C E E D I N G S

2 MR. MILAZZO: Okay.

3 MR. EAGAN: I have no idea.

4 MR. MILAZZO: Do you own all the lands  
5 like pursuant to a common scheme?

6 MR. BARON: Well, I object to the term  
7 scheme, I mean.

8 MR. MILAZZO: Plan.

9 (Laughter.)

10 MR. BARON: I don't think that's  
11 before this hearing. I mean --

12 MR. MILAZZO: No, that's a -- that's a  
13 fair question.

14 MR. EAGAN: I don't understand, what  
15 lands are --

16 MR. BARON: What exactly --

17 MR. EAGAN: -- you referring to?

18 MR. MILAZZO: I'm asking about the  
19 property directly to the east of this, are you  
20 on that deed?

21 MR. EAGAN: I'm not aware.

22 MR. MILAZZO: Okay.

23 MR. EAGAN: Mr. Milazzo, look, from  
24 New York City to Montauk, this family owns  
25 property out --

1 P R O C E E D I N G S

2 MR. MILAZZO: Mr. Baron --

3 Mr. Baron, the question's a yes or no question.

4 MR. EAGAN: -- from the whole Island.

5 MR. BARON: Well, he's answered it;  
6 all right. He's not Donald Trump.

7 (Laughter.)

8 MR. EAGAN: We have no idea -- I am  
9 not Donald Trump.

10 MR. MILAZZO: I mean you don't know  
11 what you own?

12 MR. BARON: Calm down, stay down. We  
13 answered the question, Armand, thank you.

14 MR. EAGAN: I have no idea.

15 MR. MILAZZO: You don't know if you  
16 own a piece --

17 MR. BARON: The hearing is about --

18 MR. EAGAN: I don't know.

19 MR. MILAZZO: Did you submit an  
20 affidavit on the piece next to it?

21 MR. BARON: Let's not fight, come on.

22 MR. EAGAN: I have no --

23 MR. BARON: He says he doesn't know.

24 MR. MILAZZO: Did you submit an  
25 affidavit on the piece next to it saying you're

1 P R O C E E D I N G S

2 the owner?

3 MR. EAGAN: We'll check.

4 MR. BARON: I'm sorry the question  
5 was, does he --

6 MR. EAGAN: We'll check -- we'll  
7 check.

8 MR. MILAZZO: Okay.

9 MR. BARON: All right. They'll check  
10 it out. The -- the only -- they do own various  
11 pieces of property, I don't know.

12 MR. MILAZZO: I -- I'm just -- and I  
13 understand.

14 MR. BARON: And they're all in  
15 different entities. They're not all -- always  
16 in the same name, so it is a -- it is a  
17 difficult question to answer.

18 MR. MILAZZO: Yeah. And I'm just  
19 trying to get a sense of who owns what.

20 MR. BARON: But that -- how --

21 MR. EAGAN: Well, I --

22 MR. BARON: -- is that relevant? Let  
23 me answer. How is it relevant to the -- the  
24 appeal that's being brought here today,  
25 because --

1 P R O C E E D I N G S

2 MR. MILAZZO: It's -- it's just it's  
3 relevant only 'cause it just gives a picture of  
4 who has what plan.

5 MR. BARON: Yeah, but that -- that --  
6 would that in any way change how the --

7 MR. MILAZZO: All right. That's the  
8 question I'm asking.

9 MR. BARON: -- what is -- is it going  
10 to --

11 MR. MILAZZO: Do your --

12 MR. BARON: -- decide the case, or  
13 is --

14 MR. MILAZZO: -- is your access to  
15 this parcel over the road -- proposed access to  
16 this property over the road or another person?

17 MR. BARON: Say that again.

18 MR. MILAZZO: How would you take  
19 access to the parcel under question?

20 MR. BARON: You got to pay attention.

21 You're talking about -- we're talking  
22 about --

23 MR. MILAZZO: You made an application  
24 to --

25 MR. BARON: -- the 40 by --

1 P R O C E E D I N G S

2 MR. MILAZZO: -- the Commission --

3 MR. EAGAN: I don't understand.

4 MR. MILAZZO: -- to develop lot 36;

5 right?

6 MR. BARON: Listen to the question.

7 MR. MILAZZO: You made an application  
8 to develop this property?

9 MR. BARON: This -- this particular --

10 MR. MILAZZO: This piece, the reason  
11 we're here today, to discuss this application  
12 for lot 36. How is he going to take access?

13 MR. EAGAN: The question is hardship,  
14 and if I have beneficial use.

15 MR. MILAZZO: No, the question is how  
16 are you getting --

17 MR. EAGAN: Could you please tell me  
18 how I have beneficial use or how I don't have a  
19 hardship?

20 MR. BARON: Are you answering the  
21 question with a question?

22 MR. MILAZZO: And just how are you  
23 taking access? If I was to -- if the  
24 Commission was to grant this approval, that  
25 approval would inquire access to the property.

1 P R O C E E D I N G S

2 And the Commission was --

3 MR. EAGAN: (Laughter.) By  
4 helicopter, Mr. Milazzo. (Laughter.)

5 MR. BARON: I told you not to say  
6 that.

7 MR. MILAZZO: All right --  
8 (Laughter.)

9 MR. MILAZZO: -- okay. Have you --  
10 have you -- okay, I'm good. Have you said --

11 CHAIRWOMAN MEEK GALLAGHER: All right,  
12 so --

13 (Laughter.)

14 CHAIRWOMAN MEEK GALLAGHER: -- does  
15 anyone else have anything to say or can we  
16 close this out?

17 (No response.)

18 CHAIRWOMAN MEEK GALLAGHER: Okay.  
19 However I believe Mr. Eagan indicated he'd like  
20 time to submit, so close it for?

21 MR. MILAZZO: The decision --

22 CHAIRWOMAN MEEK GALLAGHER: Yes, in  
23 December.

24 MR. MILAZZO: The December meeting --  
25 the December meeting.

1 P R O C E E D I N G S

2 So we're gonna -- so the  
3 recommendation would be to close the hearing  
4 and allow -- how long? You wanted to submit  
5 something additionally. That's fine.

6 MR. BARON: Two things. We wanted to  
7 have the right to -- you don't want to -- you  
8 want to close the hearing and -- and the --

9 MR. MILAZZO: You don't need it. You  
10 mentioned before you wanted to, or you don't  
11 want to?

12 MR. BARON: We'll give you a moment.

13 MR. MILAZZO: Okay, that's fine.

14 (Whereupon, a discussion was held off  
15 the record.)

16 MR. BARON: All right. We're -- we're  
17 going to withdraw that request. We're -- we're  
18 agreeing to close the hearing and with the  
19 documents that have all been submitted to this  
20 Board.

21 MR. MILAZZO: Okay, no problem.

22 MR. BARON: And we'll await the  
23 decision.

24 MR. MILAZZO: Right, and the decision  
25 deadline is December, the December meeting.

1 P R O C E E D I N G S

2 MR. BARON: December what, you said?

3 MR. MILAZZO: December meeting.

4 MR. BARON: Whatever the date that is.

5 MR. MILAZZO: Okay.

6 CHAIRWOMAN MEEK GALLAGHER: So we need  
7 a motion to close the hearing, or no we just  
8 closed it?

9 MR. MILAZZO: What was that?

10 So there is one document that Julie  
11 mentioned in her staff report that has not --  
12 not been received, which is from the Natural  
13 Heritage Program.

14 CHAIRWOMAN MEEK GALLAGHER: Oh, okay.  
15 So we need to leave the record open for that.

16 MS. HARGRAVE: Yeah, 30 days.

17 MR. MILAZZO: I would close the  
18 hearing.

19 CHAIRWOMAN MEEK GALLAGHER: Right.

20 MR. MILAZZO: And then leave the  
21 record only open for that one document.

22 CHAIRWOMAN MEEK GALLAGHER: Okay.

23 MR. MILAZZO: And then as soon as it's  
24 received, the Commission could provide it to  
25 the Dittmers --

1 P R O C E E D I N G S

2 CHAIRWOMAN MEEK GALLAGHER: All right,  
3 so that's --

4 MR. MILAZZO: -- to Mr. Eagan.

5 CHAIRWOMAN MEEK GALLAGHER: -- so  
6 that's the motion.

7 MR. MILAZZO: Yeah.

8 CHAIRWOMAN MEEK GALLAGHER: Okay.  
9 What John said.

10 MR. COLLINS: I'll make the motion.

11 MR. MILAZZO: Did you hear what we  
12 said, we're going to --

13 MR. EAGAN: Right.

14 MS. PINES: Second.

15 MR. MILAZZO: -- close it. And there  
16 is that one document, and as soon as the  
17 Commission gets it, they'll send it out to  
18 Mr. Baron.

19 MR. BARON: What document is that?

20 MR. MILAZZO: That was the Natural  
21 Heritage Program.

22 MR. BARON: Oh, that's fine.

23 MR. MILAZZO: Oh, yeah, so as soon as  
24 we get it, we'll get it out to you.

25 MR. BARON: Thank you.

1 P R O C E E D I N G S

2 CHAIRWOMAN MEEK GALLAGHER: Okay.

3 MR. BARON: Thank you.

4 CHAIRWOMAN MEEK GALLAGHER: All in  
5 favor?

6 (Chorus of "ayes.")

7 CHAIRWOMAN MEEK GALLAGHER: Opposed?

8 (No response.)

9 CHAIRWOMAN MEEK GALLAGHER: Any  
10 abstentions?

11 (No response.)

12 CHAIRWOMAN MEEK GALLAGHER: All right,  
13 the hearing is -- is closed. The record's kept  
14 open for that one document.

15 MR. BARON: Thank you.

16 (Time Noted: 4:01 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK                    )  
  :        ss.:  
COUNTY OF SUFFOLK                    )

I, STEPHANIE J. VALDER, a Shorthand  
Reporter and Notary Public within and for the  
State of New York, do hereby certify that I  
reported the proceedings in the within-entitled  
matter, on October 17, 2018, and that this is a  
true and accurate transcription of such  
proceedings.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 22nd day of October, 2018.

STEPHANIE J. VALDER

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E R R A T A S H E E T

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CHANGE or CORRECTION

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